

REMARKS

This Amendment is in response to the Examiner's Advisory Action mailed on July 16, 2004 and the Office Action mailed January 12, 2004. Claims 31-56 have been cancelled. Claim 1 have been amended. New claims 57-60 have added. Claims 1-30 and 57-60 are now pending.

Claims 1, 2, 4, 5, 25-27 stand rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Luo et al. (Kunchong Xuebao 40:358-365, 1997) and Mamedov (SU 232667, 5/6/69). Specifically, the Examiner states that Luo teaches that anabasine as well as aloperine are used to kill aphids; and Mamedov teaches a composition comprising polyoxyethylated alkyl phenol.

Applicants express appreciation to the Examiner for conducting a telephone interview with Applicants on June 2, 2004. During the interview, Applicants explained to the Examiner that an embodiment of the claimed invention was shown to have synergistic, pesticidal effects on insects (Example 5, Table IX, page 33).

Applicants also pointed out that Luo et al. merely compared toxicities of 7 quinolizidine alkaloids **individually** against turnip aphids. *See Abstract.* As acknowledged by the Examiner, Luo et al. does not teach a single composition comprising both anabasine and aloperine; neither does this reference teach or suggest composition comprising polyoxyethylated alkyl phenol.

The secondary reference cited, Mamedov discloses an emulsion of 1-phenyl-1-(decyl)-3 methoxypropane with an alkyl phenol-ethylene oxide wetting agent. *See Abstract.* This reference does not teach a pesticide comprising an alkaloid, let alone suggest a synergistic combination of two or more alkaloids in a water-miscible solvent at least 20% by weight, as specified in claim 1. Having carefully reviewed the abstracts of Luo and Mamedov cited by the Examiner, Applicants failed to find **any evidence** showing that either Luo et al. or Mamedov suggests that the alkaloids be combined with a water miscible solvent at least 20% by weight and such a combination would be synergistic in its pesticidal activity.

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The cited references neither motivate one to modify Luo et al. in view of Mamedov to arrive at the combination of alkaloids, nor provide one with a reasonable expectation of success. Absent objective evidence provided by the Examiner showing such, a *prima facie* case of obviousness has not been established.

However, in an effort to advance prosecution of this application and without acquiescing to the propriety of this rejection, Applicants have amended independent claim 1 to specify a pesticidal composition comprising: a non-aqueous, water miscible solvent at least 20% by weight; and a synergistic and pesticidally effective combination of toosendanin, stemonine, and anabasine. As discussed above, the cited references, each alone or in combination, fail to teach or suggest a pesticide have a synergistic combination of anabasine and aloperine in a water miscible solvent that is at least 20% by weight, let alone teach or suggest a synergistic combination of toosendanin, stemonine, and anabasine. Thus, the claimed invention is not only novel but also non-obvious in view of the cited references. Withdrawal of the rejection under 35 U.S.C §103(a) is therefore respectfully requested.

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## CONCLUSION

In light of the arguments set forth above, Applicants earnestly believe that they are entitled to a letters patent, and respectfully solicit the Examiner to expedite prosecution of this patent application to issuance. Should the Examiner have any questions, the Examiner is encouraged to telephone the undersigned.

The Commissioner is hereby authorized to charge and credit deposit account 23-1415 (Attorney Docket No. 25885-703) for any charge of credit, overpayment, or any additional fees required.

Respectfully submitted,

Date: July 30, 2004

By:

  
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Shirley Chen, Ph.D.  
Registration No. 44,608

WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304-1505  
Direct line: (650) 565-3856  
**Customer Number: 021971**